



PUBLIC NOTICE

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MEDIA BUREAU PROVIDES ADDITIONAL GUIDANCE ON PRECLUSION SHOWING FILING REQUIREMENTS FOR AUCTION 83 FM TRANSLATOR APPLICANTS

The Media Bureau (“Bureau”) provides further clarification on the preclusion showings (“Preclusion Showings”) that must be filed to permit the continued processing of certain Auction 83 FM translator applications. The Bureau is providing this guidance because it has identified a number of applications and amendments which were filed without a required Preclusion Showing or filed with defective Preclusion Showings. Failure to file a required Preclusion Showing or to correct defects by the relevant filing deadline will result in the dismissal of these Form 349 tech box and/or “long form” applications.

Section 5 of the Local Community Radio Act of 2010¹ requires the Commission to ensure that licenses are available for low power FM (“LPFM”) stations. To implement this provision, the Commission identified remaining LPFM licensing opportunities within the core areas of 156 markets and established a protection scheme for these identified “channel/point combinations” in the defined market grid (“Market Grid”) in each of these markets.² These licensing opportunities are based in part on the classification of a market as either “Spectrum Limited” or “Spectrum Available.”³ In addition, the Commission established a “plus one channel for LPFM licensing” requirement for any out-of-grid FM translator transmitter site location within a Top-50 Spectrum Limited Market.⁴ The Preclusion Showings for these two situations are called the Grid Test and Top-50 Transmitter Site Test, respectively.

Some applicants will be required to submit Preclusion Showings as amendments to their pending Form 349 tech box proposals and others as part of their “long form” application filings. The timing of the filing requirement also will vary based on the schedule of translator licensing actions adopted in the

¹ Pub. L. No. 111-371, 124 Stat. 4972 (2011).

² See *Creation of a Low Power Radio Service*, Fourth Report and Order and Third Order on Reconsideration, 27 FCC Rcd 3364, 3382-88 (2012) (“*Fourth Report and Order*”).

³ *Id.* at 3398-3406.

⁴ *Id.* at 3383-84.

*Fourth Report and Order.*⁵ However, in every instance, an applicant must file a Preclusion Showing when its proposal could potentially preclude any protected LPFM channel/point combinations. Under the procedures established for the processing of these translator applications, applicants in certain circumstances may technically amend the tech box proposal filed during the FM translator Auction 83 filing window (“Technical Amendments”), e.g., changes in power, height, channel, location, antenna pattern, etc., at designated times.⁶ The filing of a Technical Amendment may trigger the requirement to file a Preclusion Showing. Accordingly, the following examples distinguish between original technical proposals and those with Technical Amendments.

A Preclusion Showing is required if *any* of the categories labeled “**Required**” applies to a FM translator proposal with regard to *any* Market Grid or *any* Top-50 Spectrum Limited market. Distance calculations are based on proposed FM translator transmitter sites.

If an applicant is prosecuting an original proposal:

- The proposal is within 39 km of a Spectrum Limited Market Grid – **Required**. This proposal could preclude a protected channel/point combination. The filing requirement applies to both proposals located within and outside the Spectrum Limited market.
- The proposal is within 39 km of a Spectrum Available Market Grid – **Not Required**. This proposal could not preclude a protected channel/point combination because all protected channel/point combinations in Spectrum Available markets assume the grant of all translator proposals.
- The proposal specifies an out-of-grid location within a Top-50 Spectrum Limited Market – **Required**. The proposal could preclude the only channel/point combination at the specified transmitter site location.

If an applicant has filed a Technical Amendment:

- The proposal is within 39 km of a Spectrum Limited Market Grid – **Required**.
- The proposal is within 39 km of a Spectrum Available Market Grid – **Required**. This proposal could preclude a protected channel/point combination because protected channel/point combinations in the Spectrum Available market did not take into account the grant of this amended proposal.⁷
- The proposal specifies an out-of-grid location within a Top-50 Spectrum Limited Market – **Required**.

⁵ *Id.* at 3387.

⁶ *Id.* at 3385-86 (applicants will be provided “limited opportunity” to ensure that proposals do not eliminate protected channel/point combinations).

⁷ See, e.g., *Media Bureau Announces FM Translator Auction 83 Filing Window and Filing Procedures*, Public Notice, DA 13-283 (rel. Feb. 26, 2013) (“*Singleton Filing PN*”) (any Form 349 proposal which differs from original tech box proposal and proposes a transmitter site “at a location within the 39 km buffer of ANY defined Market Grid” must file Preclusion Showing) (emphasis in original).

Applicants with upcoming filing deadlines should refer to the pertinent Bureau Public Notices⁸ for detailed filing instructions. For additional information, contact Rob Gates or Larry Hannif-Ali of the Audio Division at (202) 418-2700.

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⁸ See *Singleton Filing PN* at 1 (establishing March 28, 2013 Form 349 filing deadline for certain singleton applications outside Spectrum Limited markets); *Media Bureau Announces April 1 – April 19 Filing Window for FM Translator Auction 83 Preclusion Showings*, Public Notice, DA 13-427 (rel. March 14, 2013) (establishing an April 19, 2013 tech box amendment deadline for proposals in or near Spectrum Limited markets).